IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 490 OF 2005

Bandra Reclamation Sra
Co-operative Housing Society
Ltd. and another. ... Petitioners.

V/s

Slum Rehabilitation Authorities
and others. ... Respondents.

Mr.N.V.Gangal for the petitioners.

Mr.G.D.Utangale for respondent No.1.

Mr.Mattos with Ms.G.P.Mulekar for respondent No.2.

Ms.G.P.Mulekar, A.G.P. for respondent Nos.3 to 5.

CORAM: A.S. OKA, J.

DATE: 1st March, 2005.

P.C. :

. Rule.

2. Learned counsel appearing for the respondents waive service.

3. The challenge in this writ petition under Article 227 of the Constitution of India is to that part of the order dated 19th January 2005 by which the learned trial Judge declined to grant leave under section 80(2) of the Code of Civil Procedure, 1908 ("C.P.C." for short)

4. The learned counsel appearing for the Petitioners submitted that considering the fact that the Petitioners-Plaintiffs had applied for urgent ad-interim relief against the Respondent Nos.1, 3, 4 and 5 leave under section 80(2) of C.P.C. ought to have been granted. He submitted that no reasons are assigned for refusing to grant leave.

5. The Petition is opposed by the learned counsel appearing for the respondents. Shri Mattos appearing for the Respondent No.2 submitted that the Petitioners will have to serve separate statutory notice on the Respondent No.2.

6. Sub-section (2) of section 80 of C.P.C. read thus:

> "**80. Notice.-** ... ...
>
> (2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

. Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

7. In the suit filed by the Petitioners a prayer has been made for grant of urgent or immediate relief against the concerned Defendants including the State Government. In my view, leave under section 80(2) of C.P.P. deserves to be granted in the facts and circumstances of the case. In so far as the submission made by Shri Mattos appearing for the Respondent No.2 is concerned, I am not dealing with the same as in this writ petition the only issue is as regards to the grant of leave under section 80(2) of C.P.C. Hence this petition deserves to be allowed.

I, therefore, pass the following order:

O R D E R

(i) The impugned order dated 19th January 2005 to the extent to which it rejects an application for leave under section 80(2) of C.P.C. is quashed and set aside and leave is granted under section 80(2) of C.P.C. to the Petitioners to file the suit in question.

(ii) Rule is made absolute in the above terms with no order as to costs.

(iii) All the concerned parties to act on an authenticated copy of this order.

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